

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #12	CCRB Case #: 201802098	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/08/2018 2:30 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 52	18 Mo. SOL 9/8/2019	EO SOL 9/8/2019	
Date/Time CV Reported Fri, 03/09/2018 11:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/16/2018 11:09 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jorge Monge	06417	955212	052 PCT
2. SGT Charles Cavallaro	4758	938197	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Edmundo Rivera	00696	955382	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
B.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro frisked § 87(2)(b)	§ 87(2)(b)
C.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro searched § 87(2)(b)	§ 87(2)(b)
D.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro frisked § 87(2)(b)	§ 87(2)(b)
E.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro searched § 87(2)(b)	§ 87(2)(b)
F.SGT Charles Cavallaro	Abuse: Sergeant Charles Cavallaro searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
G.POM Jorge Monge	Abuse: Police Officer Jorge Monge threatened to arrest § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)

Case Summary

§ 87(2)(b) filed this complaint with IAB via telephone on behalf of himself and his uncle, § 87(2)(b) on March 9, 2018, generating log number 18-9420. The CCRB received this case on March 16, 2018.

On March 8, 2018, at approximately 2:30 p.m., Sgt. Charles Cavallaro, PO Edmundo Rivera, and PO Jorge Monge from the 52nd Precinct Anti-Crime unit stopped § 87(2)(b)'s vehicle in front of § 87(2)(b) in the Bronx, for a tampered license plate (**Allegation A: Abuse of Authority,** § 87(2)(g) Sgt. Charles Cavallaro frisked and allegedly searched both § 87(2)(b) and § 87(2)(b) (**Allegation B: Abuse of Authority,** § 87(2)(g) **Allegation C: Abuse of Authority,** § 87(2)(g) **Allegation D: Abuse of Authority,** § 87(2)(g) **Allegation E: Abuse of Authority,** § 87(2)(g) Sgt. Cavallaro searched § 87(2)(b)'s vehicle (**Allegation F: Abuse of Authority,** § 87(2)(g) PO Jorge Monge threatened § 87(2)(b) with arrest (**Allegation G: Abuse of Authority,** § 87(2)(g) No arrests or summonses resulted from this incident.

Security footage was obtained from § 87(2)(b). However, while the footage captured the stop of the vehicle, no additional FADO allegations were clearly captured because of the quality of the video and the distance from the location of the stop. Additionally, § 87(2)(b) possessed cell phone footage of this incident during his in-person statement. However, § 87(2)(b) was ultimately uncooperative in providing the video to the CCRB.

§ 87(2)(b) identified a potential witness to this incident, whom he identified only as § 87(2)(b). However, § 87(2)(b) did not know § 87(2)(b)'s full identity, and the investigation was ultimately unable to identify her. Therefore, no witness testimony was received for this case (Board Review 16).

A spinoff for this case was referred to IAB under Case #201802788 because of § 87(2)(b)'s allegation of inappropriate sexual touching.

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Charles Cavallaro stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation G – Abuse of Authority: Police Officer Jorge Monge threatened § 87(2)(b) with arrest.

It is undisputed that § 87(2)(b)'s vehicle possessed a temporary license plate on its rear, which was altered with scotch tape. It is also undisputed that the officers, who were being supervised by Sgt. Cavallaro, stopped § 87(2)(b)'s vehicle because of the tampered license plate. Further, it is undisputed that an officer told § 87(2)(b) that he could be arrested for tampering with his license plate.

§ 87(2)(b) alleged that his temporary license plate ripped during a recent snowstorm, so he used scotch tape to tape it back together. At the end of the vehicle stop, § 87(2)(b) alleged that PO Edmundo Rivera told him that he could be arrested for tampering with a license plate (Board Review 01).

Both PO Monge and PO Rivera testified that PO Monge told § 87(2)(b) that tampering with a license plate was an arrestable offense (Board Reviews 02 and 03).

License plates shall be kept in a condition so as to be easily readable, and should not be covered by any plastic, artificial, or synthetic material. New York State Vehicle and Traffic Law, Section 402 (Board Review 04).

Given that § 87(2)(b) acknowledged tampering with his temporary plate, which is a violation of the Vehicle and Traffic Law, officers were justified in stopping his vehicle. Furthermore, while it is disputed amongst the two parties who told § 87(2)(b) that he could be arrested for tampering with the plate, the threat was a statement of fact in response to the observation of the undisputed violation. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation B – Abuse of Authority: Sergeant Charles Cavallaro frisked § 87(2)(b)

Allegation C – Abuse of Authority: Sergeant Charles Cavallaro searched § 87(2)(b)

It is undisputed that § 87(2)(b) was the driver of his vehicle and that § 87(2)(b) was sitting in the front passenger's seat. It is also undisputed that Sgt. Cavallaro frisked § 87(2)(b) § 87(2)(b) alleged that, upon being stopped, he took the keys out of the ignition with his right hand and placed them on the hood of the vehicle with his left hand. § 87(2)(b) denied that either he or § 87(2)(b) made any additional movements immediately upon being stopped. Sgt. Cavallaro then asked § 87(2)(b) out of the vehicle, telling § 87(2)(b) that it was because he was making "funny movements." § 87(2)(b) stepped out of the vehicle, and Sgt. Cavallaro frisked him along his arms, sides, jacket pockets, and crotch area. Sgt. Cavallaro entered § 87(2)(b)'s three jacket pockets and three pants pockets, removing § 87(2)(b)'s money, receipts, and black wallet. Sgt. Cavallaro looked at the items and put them back in their respective pockets (Board Review 01).

§ 87(2)(b) alleged that, immediately upon being stopped, § 87(2)(b) placed his license and registration on the dashboard, but § 87(2)(b) could not recall at what point § 87(2)(b) initially reached for his documentation. § 87(2)(b) denied that either he or § 87(2)(b) made any additional movements in the vehicle. § 87(2)(b) was ordered out of the vehicle, and Sgt. Cavallaro and PO Rivera patted § 87(2)(b) down on his arms and legs. Sgt. Cavallaro and PO Rivera both entered § 87(2)(b)'s jacket pockets and took money out of the pockets (Board Review 05).

Sgt. Cavallaro testified that, upon approaching § 87(2)(b)'s vehicle, he observed § 87(2)(b) lean forward, place his right hand behind his back briefly, and then bring it back forward. Sgt. Cavallaro believed, through his training and experience, that § 87(2)(b) was attempting to conceal an object behind his back, and Sgt. Cavallaro feared it to be a firearm. Sgt. Cavallaro denied observing anything from § 87(2)(b) that further raised his suspicion. Sgt. Cavallaro decided to have § 87(2)(b) step out of the vehicle for safety purposes. Sgt. Cavallaro frisked § 87(2)(b) on the waistband, as well as "normal" areas where someone could hide a weapon, which he noted to be the legs, groin area, chest, and under the armpits. He stated that he frisked § 87(2)(b) because of § 87(2)(b)'s aforementioned movement upon Sgt. Cavallaro's initial approach of the vehicle. Sgt. Cavallaro denied entering § 87(2)(b)'s pockets at any point (Board Review 06).

PO Monge testified that, upon the officers' initial approach of § 87(2)(b)'s vehicle, Sgt. Cavallaro instructed both § 87(2)(b) and § 87(2)(b) to stop moving. PO Monge directed his attention to § 87(2)(b) because of Sgt. Cavallaro's command, and observed § 87(2)(b) with his body angled underneath his seat. PO Monge did not notice whether § 87(2)(b) was moving because he could not see § 87(2)(b) from where he was standing. Sgt. Cavallaro frisked § 87(2)(b)

It is unlawful for an officer to search a vehicle once its occupants have been removed and patted down unless information gathered during the stop reveals that (1) there is a substantial likelihood of a weapon being present in the vehicle which (2) poses an “actual and specific danger” to the officer’s safety. People v. Newman, 96 A.D.3d 34 (2012) (Board Review 08).

Though § 87(2)(b) s exact movements in the vehicle are disputed, Sgt. Cavallaro’s justification for searching the vehicle, if factual, does not satisfy the requirement set forth by Newman. First, although Sgt. Cavallaro testified that he observed a screwdriver on the front passenger’s seat, he admittedly believed the object to be innocuous and not the subject of § 87(2)(b) s movement. However, Sgt. Cavallaro denied observing any additional movement by § 87(2)(b) that raised his suspicion that § 87(2)(b) was concealing a weapon, testifying that he only searched the vehicle on a hunch that § 87(2)(b) possibly reached underneath his seat prior to Sgt. Cavallaro’s observation. § 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Mediation, Civil, and Criminal Histories

- This case was suitable for mediation, but § 87(2)(b) declined to mediate.

- § 87(2)(b)
- § 87(2)(b)

§ 87(2)(b)

- As of June 15, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 11).

Civilian and Subject Officer CCRB Histories

- § 87(2)(b) has been party to two CCRB complaints and has been named a victim in four allegations (Board Review 12):
 - 200611687 involved allegations of property damage, entry of premises, refusal to process civilian complaint, and a threat of arrest, and was closed as complainant uncooperative.
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 13).
- Sgt. Cavallaro has been a member of service for 13 years and has been a subject in 21 CCRB complaints and 51 allegations, six of which were substantiated:
 - 201607995 involved substantiated allegations of a vehicle stop and vehicle search against Sgt. Cavallaro. The Board recommended formalized training and the NYPD imposed formalized training.
 - § 87(2)(g)
- PO Monge has been a member of service for five years and has been a subject in five CCRB complaints and nine allegations, one of which was substantiated:
 - 201510236 involved a substantiated allegation of physical force against PO Monge. The Board recommended charges, and the NYPD imposed a forfeiture of 15 vacation days.
 - § 87(2)(g)

Squad No.: 16

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date